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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,073	11/20/2000	James M. Cantonis	ACME SPONGE	8877
7590	05/04/2004		EXAMINER	
James C Wray 1493 Chain Bridge Road Suite 300 McLean, VA 22101			COLE, LAURA C	
			ART UNIT	PAPER NUMBER
			1744	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/715,073	Applicant(s) CANTONIS, JAMES M.	
	Examiner Laura C Cole	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on 22 March 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-9, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al., USPN 5,671,498.

Martin et al. discloses a scrubbing device that is an elongated wringable pad comprising a cover (14) and absorbent material (12; Figure 1), at least one rectangular piece forming the cover (Column 5 Lines 64-66; see also Figures 1 and 2, that the stitching indicates that the pieces are rectangular to form the assembly), plural holes

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within the piece (Column 5 Lines 44-47), and the pad of a sufficient length to wring, the holes are spaced on one-half inch centers (Column 5 line 46 discloses a hole size of $1/16$ of an inch and therefore every eighth hole is one half inch interval from another), the absorbent material may be a poly sponge (Column 5 Lines 52-53), the at least one rectangular piece is two rectangular sheets (Column 3 Lines 52- 54) which has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), and a pocket formed by joints that are stitches (Column 6 Lines 17-25). Martin et al. discloses does not disclose a physical dimension for the scrubbing device. Martin et al. dose however provide a teaching that the cover may extend for a length to enable a human user to cleanse the back (Figure 19 and Column 9 Lines 41-60.)

3. Claims 39-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Giallourakis, USPN 4,821,360.

Giallourakis discloses a polishing pad that comprises a cover that encloses an absorbent material (Figure 3 (2)), the cover further comprising first and second side portions (where the label (12) is located in Figure 2 is one side and there being an opposite side portion (where the label (8) is located in Figure 2), top and bottom portions (Figure 1), and first and second opposite end portions (shown in Figure 4, one end portion near the label (13)) having a complementary shape for fitting within the cover, and the cover having a plurality of openings (Figure 5). The openings are disposed on the top, bottom, sides, and ends of the cover (Column 3 Lines 35-40) as the fabric with the openings is used for the entire cover. The cover further comprises connections that are seams (Figure 2 (12), (14), (18)) that can be turned inside out as

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shown in Figure 3 to have inside seams for a smooth outer surface. The connections are on both or either side portion, the top and bottom portions, and one end portion (Figures 2 and 3). The other end portion "seam" comprises of an elastic member (Figure 4 (13)) that joins the end portion to the side portion, top portion, and bottom portion and forms a smooth outer surface.

In addition, the pad cover is formed of at least one rectangular piece (Column 2 Lines 38-41), plural holes in that piece (Figure 5), the pad being of a sufficient length to wring, the absorbent material is an elongated poly sponge (Column 2 Lines 12-13), wherein the at least one rectangular piece is an at least one rectangular sheet (Column 3 Lines 10-13 and Lines 36-38), the at least one rectangular sheet having has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), a pocket formed by joints along the edges (Column 3 Lines 24-26), the joints being seams formed by stitches (Column 3 Lines 18-20), the pocket has the seams inward facing and smooth outer surfaces (Column 2 Lines 28-30 provide that it can be sown but turned inside out so that the smooth surface is the outer surface), at least one rectangular sheet has folds medially between the end edges about an axis forming a pocket having equal halves joined along the side edges (Figures 1A and 2A), plural pieces form the cover (Column 2 Lines 38-41), and the cover completely encloses the absorbent material and edges are jointed to prevent the absorbent from slipping out (Figure 4 and Column 3 Line 52 to Column 4 Line 4). Further, the plural pieces are at least four rectangular pieces (Column 3 Lines 35-40 disclose that each of two sheets may have a double layer of material, which is a total of four sheets),

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connections for the four sheets being stitched seams in alignment along the two longer parallel side edges and end edge comprising a pocket (Column 3 Lines 40-46; Figure 2), where the pocket has the seams inward facing and smooth outer surfaces (Column 2 Lines 28-30 provide that it can be sown but turned inside out so that the smooth surface is the outer surface), the absorbent material to be inserted is an elongated poly sponge (Column 2 Lines 12-13), and the sheets are formed by connections prior to the insertion of the absorbent material (Column 3 Lines 48-51). Even further, Giallourakis discloses that an at least one rectangular sheet that has opposite end-edges and side-edges has a fold between the end edges about a medial axis forming a pocket having the adjacent edges joined to each other (Column 3 Lines 10-13, Lines 27-31; Figures 1 A and 2A).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3, 5-9, 17-19, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sewell, USPN 3,083,392.

Sewell discloses a combination sponge and chamois that is an elongated (Figures 1, 2, or 3) wringable pad that has a chamois cover (Figure 1 (3), Figure 2 (7), and Figure 3 (13)), at least one rectangular piece forming the cover (Figures 1-3), plural holes in the piece (Figure 1 (4); Figure 2 (11); Figure 3 (15)), the pad of a sufficient length to wring, an artificial sponge (which would include poly) (Figure 1 (2); Figure 2

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(6); Figure 3 (12), the at least one rectangular piece is an at least one rectangular sheet which has two opposite end edges and side edges (a rectangle must have opposite end edges and side edges), a pocket is formed by joints along the edges for receiving and holding the absorbent material, where the joints are formed by stitches (Column 2 Lines 22-23), and plural chamois (also man-made chamois-like) pieces may form the cover (Figures 2 and 3).

The length and width is not specifically disclosed, however it appears in Figure 1 that the length is approximately three times greater than the width. It would have been obvious to one of ordinary skill in the art to modify the width or length of Sewell to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas.

5. Claims 1, 5-11, 13, 14, 18, 22-23, 27-38, 57, and 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Giallourakis, USPN 4,821,360.

Giallourakis discloses all elements above however does not disclose the specific length and width although it appears in Figures 3 and 4 that the length is approximately three times greater than the width.

It would have been obvious to one of ordinary skill in the art to modify the width or length of Giallourakis to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as obvious over Sewell, USPN 3,083,392.

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Sewell does not more specifically recite that the length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches.

It would have been obvious for one of ordinary skill in the art to modify Sewell so that the cover has dimensions that the length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches as to be an appropriate dimension for specific cleaning purposes.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360.

Giallourakis discloses all elements mentioned above, however does not disclose that the fold is made medially between the side-edges. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make a medial fold along the side-edges instead of the end-edges because Applicant has not disclosed that folding the material along particular edges provides an advantage is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art furthermore, would have expected Applicant's invention to perform equally as well with the fold medially along the side edges because it will still form a pocket with three sides with stitched joints. Therefore it would have been obvious for one of ordinary skill in the art to modify '360 to obtain the invention as specified in claims 12 and 14.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as obvious over Martin et al., USPN 5,671,498.

Martin et al. disclose all elements above including a teaching that the device may be used with an additional holder to be further elongated in order to clean a user's back.

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With this use, the length of the cover could be *about* 37 ¼" and the width is *about* 6 ¼" since those are suitable dimensions for cleaning a human back.

It would have been obvious for one of ordinary skill in the art to modify Martin et al. so that the cover has a length of about 37 ¼" and the width is about 6 ¼" as to be an appropriate dimension for specific cleaning purposes, such as a human back.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as obvious over Giallourakis, USPN 4,821,360.

Giallourakis does not more specifically recite that the length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches.

It would have been obvious for one of ordinary skill in the art to modify Giallourakis so that the cover has dimensions that the length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches as to be an appropriate dimension for specific cleaning purposes.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sewell, USPN 3,083,392.

Sewell discloses all elements mentioned above including the cover material being chamois, however does not disclose a sheep-skin chamois.

It would have been obvious to one of ordinary skill at the time of the invention was made to use sheep-skin chamois as a specific chamois cover material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

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11. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360 in view of Hale, USPN 5,918,341.

Giallourakis discloses all elements mentioned above, however does not disclose a specific length or width dimension.

Hale discloses a hand-sized controlled-fold cleaning sleeve that provides the teaching for a hand held wiping or cleaning device, the approximate size required would be 4 inches wide by 9 inches long (Column 3 Lines 27-32).

It would have been obvious to one of ordinary skill in the art to modify the size of the pad disclosed by Giallourakis and to use pieces of *about* 9 ½" in length and *about* 6 ¼" in width as Hale teaches to make the pad an appropriate and ergonomic size to be hand held.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giallourakis, USPN 4,821,360 in view of Sewell, USPN 3,083,392.

Giallourakis discloses all elements mentioned above, however does not disclose a using a chamois material. Giallourakis however does disclose that it is desirable to use a soft nonabrasive fabric (Column 1 Lines 13-14.)

Sewell discloses a chamois cover (Column 1 Lines 13-16.)

It would have been obvious to one of ordinary skill at the time of the invention was made to use chamois, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

Applicant's Arguments

13. In the Appeal Brief filed 22 March 2004, the Applicant contends that:

A. Martin's pad would be squeezable and that essentially teaches away from the claimed "wringable" pad.

B. The only way that the Martin device can work is by having at least the mandated mildly abrasive working surface. That has nothing to do with the claimed invention.

C. Martin does not describe nor teach at least one rectangular piece forming the cover.

D. Martin cannot provide the claimed device because Martin requires that the foam material must be removed from the cover for use on a surface.

E. Martin does not disclose that the holes are spaced on on-half inch centers of the cover.

F. Martin does not and cannot teach an elongate sponge.

G. Claim 6 defines the one piece as being at least one rectangular sheet. However, Martin requires at least two, if not more, rectangular spaced pieces.

H. Martin's plurality of sheets may have end and side edges, but not the at least one sheet with the edges.

I. Martin requires end stitches and side stitches to join the top and bottom panels.

J. Martin does not have the edges and side of the at least one sheet being joined but rather top and bottom panels joined by adhesion or stitching.

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K. The examiner's contention that the cover may extend a length to cleanse the back and that "the length of the cover is... at least three times greater than the width of the pad" is a misinterpretation of claim 15 which has nothing to do with cover pad ratios.

L. Giallourakis does not describe or teach a wringable pad that has an absorbent material enclosed within a cover that has holes for expressing contents of the absorbent material when wringing the pad by twisting along the length of the pad.

M. The Examiner has failed to show a teaching, suggestion, or inference anywhere in Giallourakis of plural holes in the cover that encloses the pad and helps express fluids.

N. None of the features of each of the claims 40-47 can exist in Giallourakis because the reference mandates a loosely knit cover material for the entire cover.

O. Giallourakis does not teach the claimed connections being along the different sides defined in claims 48-56 for the elongated wringable pad of the invention.

P. Sewell does not teach nor suggest an elongated wringable pad having a cover enclosing the elongated poly sponge.

Q. Sewell anchors two blocks of sponges with one block covered with material such as chamois skin and folded under the second block before anchoring the second block to the first block. That has nothing to do with the elongated wringable pad with its rectangular sheet forming the cover enclosing the sponge.

R. Nothing in Sewell teaches nor suggests sewing the side-edges/end-edges of the sheet and receiving the sponge within the cover.

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S. Sewell does not teach nor suggest plural pieces forming the cover, that the plural pieces are chamois or man-made chamois cloth.

T. Nothing in Sewell teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad.

U. The Examiner picks and chooses different features from different embodiments in Sewell to negate the claimed elements even though Sewell neither describes, suggests, teaches nor inherently provides these claimed features.

V. Giallourakis does not teach nor suggest an elongated wringable pad comprising an absorbent material, a cover enclosing the absorbent material, the cover comprising first and second elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover.

W. Totally absent from Giallourakis is the cover having a plurality of openings for wringing out contents of the pad by twisting along the length of the pad. Thus, the reference cannot anticipate nor render obvious the claimed invention.

X. Giallourakis has an open-mouthed polishing pad, and does not teach or suggest a wringable pad with a cover enclosing an absorbent material and the cover having edges joined by stitches.

Y. Giallourakis does not render obvious four pieces forming the cover that are rectangular because these claimed features do not relate to elongated wringable pads.

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Z. Giallourakis does not teach nor suggest the claimed wringable elongated pad with the defined seams.

AA. Giallourakis does not have plural pieces nor the central connections as defined in Claim 34.

AB. Giallourakis requires an opening to remove the sponge from the mesh cover.

AC. Giallourakis does not include outward facing seams.

AD. Claims 57-58 add a length of the pad or the elongated side edges is at least three times greater than a width of the pad, which is absent in Giallourakis.

AE. The examiner has used the claimed invention as a springboard to hold that unrelated elements in the references actually teach or suggest the claimed features. However, that hindsight construction cannot justify an obviousness holding unless there is a teaching or suggestion within the reference itself.

AF. Giallourakis does not teach nor suggest the features that the rectangular sheet that forms the encasing has a fold between the side edges so that the sheet is folded about an axis and joined at the edges to form the encasing.

AG. Nothing in Sewell teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from a pad, in which the cover is sheep-skin chamois.

AH. It is impermissible to use an applicant's claim as a springboard for hunting through the prior art for the claimed elements and for combining the found elements as claimed in the application.

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AI. Giallourakis teaches away from the claimed invention. Therefore, any further combination with other references would also lead away from the present claims.

AJ. Hale has nothing to do with the claimed invention which provides a cover having lengths much greater than a width.

AK. There is no teaching or suggestion to adapt the Giallourakis removable sponge within the Hale foldable sleeve and arrive at the claimed invention. In deciding that a novel combination would have been obvious, there must be supporting teaching the prior art.

AL. Giallourakis and Sewell teach away from the claimed invention. Therefore, any further combination with other references would also lead away from the present claims.

AM. There is no showing as to where there is a motivation or a suggestion within the references to effect a combination as proposed by the Examiner. Hindsight reconstruction using the present invention as a guide cannot form a sound basis for an obviousness rejection.

Response to Arguments

14. Applicant's arguments filed 22 March 2004 have been fully considered but they are not persuasive.

A. In response to applicant's argument that Martin's pad is "squeezable" and not "wringable" as the claimed invention discloses, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior

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art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Further, it is unclear to the Examiner how a pad being “squeezable” would *teach away* from a “wringable” pad. Wring is defined as “To twist, squeeze, or compress, especially so as to extract liquid” according to “*The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*” Clearly, since to wring also means to squeeze, it is clear that Martin’s pad is wringable.

B. In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., non-abrasive cover) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

C. Martin *does* describe and teach at least one rectangular piece forming the cover. See Column 5 Lines 64-66, Figures 1 and 2, that the stitching further indicates that the pieces are rectangular to form the assembly.

D. In response to applicant’s argument that Martin’s pad is does not require the foam material inserted within the cover for use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior

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art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

See also Column 5 Lines 55-56 that state that "the first layer (12) is encased *entirely* within the sleeve.

E. Column 5 line 46 discloses a hole size of 1/16 of an inch and therefore every eighth hole is one half inch interval from another

F. Martin does teach an elongate sponge (12; Column 5 Lines 50-56).

G. Examiner does not understand the argument regarding Claim 6 defining the one piece as being at least one rectangular sheet, and that Martin requires at least two, if not more, rectangular spaced pieces. Since Martin requires at least two rectangular spaced pieces, that is "at least one".

H. Examiner does not understand the argument regarding "Martin's plurality of sheets may have end and side edges, but not the at least one sheet with the edges." If Martin's plurality of sheets has end and side edges, then it *has at least one sheet* with edges.

I. Examiner does not understand the argument regarding "Martin requires end stitches and side stitches to join the top and bottom panels." Claim 8 requires that is further comprises a pocket (pocket is defined as "A receptacle, cavity, or opening" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*) and Martin discloses (14) as a

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sleeve, so Martin clearly states that it comprises a pocket. The side-edge/end edge-joints comprise the stitching or sealing (Column 6 Lines 22-25).

J. Again, the Examiner does not understand the argument regarding that Martin does not have the edges and side of the at least one sheet being joined. Clearly Column 6 Lines 22-25 states that the side-edges and end-edges are stitched or connected by adhesion, and form joints.

L. Giallourakis *does* a wringable pad that has an absorbent material (2) enclosed within a cover (see Figures 3 and 4) that has holes (see Figure 5) for expressing contents of the absorbent material when wringing the pad by twisting along the length of the pad.

M. The cover of Giallourakis is a loosely knit material (8) that has a plurality of holes or openings specifically shown in Figure 5.

Further, in response to applicant's argument that the cover helps express material when wringing the pad, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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N. See above response to argument M. Giallourakis is a loosely knit material and since it is a loosely knit material, exemplified by Figure 5, there is a plurality of openings.

Further, in response to applicant's argument that the cover has a plurality of openings, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

O. Giallourakis *does* teach the claimed connections being along the different sides defined in claims 48-56 for the elongated wringable pad of the invention. The cover further comprises connections that are seams (Figure 2 (12), (14), (18)) that can be turned inside out as shown in Figure 3 to have inside seams for a smooth outer surface. The connections are on both or either side portion, the top and bottom portions, and one end portion (Figures 2 and 3). The other end portion "seam" comprises of an elastic member (Figure 4 (13)) that joins the end portion to the side portion, top portion, and bottom portion and forms a smooth outer surface.

P. Sewell *does* teach an elongated wringable pad having a cover enclosing the elongated poly sponge. In Figure 1 the chamois cover (3) encloses the sponge (2) and in Figure 3 the chamois cover (13) encloses the sponge (12).

Q. Examiner does not understand the argument that the sponge and chamois combination of Sewell "has nothing to do with the elongated wringable pad with its rectangular sheet forming the cover enclosing the sponge". The device of Sewell is wringable, has a rectangular sheet forming a cover enclosing a sponge.

R. In the embodiment shown in Figure 3, Sewell provides the teaching of sewing the side-edges/end-edges of the sheet and receiving the sponge within the cover. See Column 2 Lines 22-23.

S. Sewell teaches plural pieces forming the cover (see Figure 3; Column 2 Lines 18-20), that the plural pieces are chamois or man-made chamois cloth (Column 1 Lines 19, 21-23, 46-48; Column 2 Lines 19-20.)

T. Sewell teaches a pad with a cover (3 or 13) enclosing an absorbent material (2) with the cover having holes or openings (4 or 15) for expressing contents from the pad.

U. By discussing all three embodiments of Sewell, the Examiner demonstrates and points out all of the features of all three embodiments (Figure 1, 2, or 3) that meet the Applicant's claimed invention. Figure 3 is the embodiment that shows the cover *entirely* enclosing the absorbent pad, however all the embodiments meet the claimed invention.

V. As mentioned above, Giallourakis *does* teach an elongated wringable pad comprising an absorbent material, a cover enclosing the absorbent material, the cover comprising first and second elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed

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between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover.

W. Again, as mentioned above, Giallourakis teaches a cover (8) having a plurality of openings (see specifically Figure 5) for wringing out contents of the pad by twisting along the length of the pad.

X. Giallourakis *does* teach a wringable pad with a cover enclosing an absorbent material and the cover having edges joined by stitches. Even though Figure 4 exhibits that Giallourakis has an open-mouthed cover, the cover still encloses the absorbent material. Enclose is defined as "to contain, especially so as to envelop or shelter" according to "*The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*" As stated above, the edges are joined by stitches.

Y. In response to applicant's argument that there comprises four pieces forming the cover that are rectangular because these claimed features do not relate to elongated wringable pads, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Z. The cover of Giallourakis further comprises connections that are seams (Figure 2 (12), (14), (18)) that can be turned inside out as shown in Figure 3 to have inside seams for a smooth outer surface. The connections are on both or either side portion, the top and bottom portions, and one end portion (Figures 2 and 3). The other end portion "seam" comprises of an elastic member (Figure 4 (13)) that joins the end portion to the side portion, top portion, and bottom portion and forms a smooth outer surface.

AA. Giallourakis discloses that an at least one rectangular sheet that has opposite end-edges and side-edges has a fold between the end edges about a *medial axis* forming a central connection pocket having the adjacent edges joined to each other (Column 3 Lines 10-13, Lines 27-31; Figures 1 A and 2A).

Further, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., central connections) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

AB. Further, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., does not have an opening) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

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specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Again, "enclose" is defined as "to contain, especially so as to envelop or shelter" according to "*The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company.*"

The edges are joined together by "13" to prevent the absorbent material from slipping out of the pocket.

AC. Figure 2 of Giallourakis includes outward facing seams.

AD. As mentioned above, it would have been obvious to one of ordinary skill in the art to modify the width or length of Giallourakis to provide the user with a sponge that can be gripped easily or to ergonomically clean narrow areas.

AE. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

AF. Giallourakis *does* teach the features that the rectangular sheet that forms the encasing has a fold between the side edges so that the sheet is folded about an axis (5) and joined at the edges to form the encasing (Column 3 Lines 30-31).

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AG. Sewell is made from chamois, although Sewell does not state a specific type of Chamois. It would have been obvious to one of ordinary skill at the time of the invention was made to use sheep-skin chamois as a specific chamois cover material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

AH. In response to applicant's argument that it is impermissible to use an applicant's claim as a springboard for hunting through the prior art for the claimed elements and for combining the found elements as claimed in the application, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

AI. It is unclear to the examiner as to how Giallourakis teaches away from the claimed invention. Giallourakis discloses all elements discussed previously.

AJ. Hale provides a teaching that elaborates a more specific dimension for a cleaning object that is hand held. Since Giallourakis is a hand held cleaning and polishing device, it would have been obvious for one of ordinary skill in the art to modify the size of the pad disclosed by Giallourakis and to use pieces of *about* 9 ½" in length and *about* 6 ¼" in width as Hale teaches to make the pad an appropriate and ergonomic size to be hand held.

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AK. Again, as Argument AJ states, both Giallourakis and Hale are hand held cleaning devices. Hale discloses a more specific dimension for the hand held device.

AL. It is unclear to the examiner as to how Giallourakis and Sewell teach away from the claimed invention. Giallourakis and Sewell disclose all elements discussed previously.

AM. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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LCC

01 May 2004



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